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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re of Application of: BURGHER, Anita M. et al.
Application No.: 10/681,489 Group No.: 1615
Filed: 10/08/2003 Examiner: BARHAM, B.
For: INFANT FORMULA CONTAINING NUCLEOTIDES
Confirmation No.: 5899
Customer Number: 25291

Mail Stop Amendment
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

REPLY TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

This is in reply to the Notification of Non-Compliant Appeal Brief dated 10/25/2007 in the above-named case.

The Examiner has identified two defective sections of the Appeal Brief filed October 3, 2007:

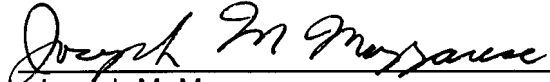
- (1) the concise statement of each ground of rejection refers to canceled claim 6;
- (2) the Related Proceedings Appendix is missing.

The Examiner has required submission of the sections that were found defective, but not the entire Appeal Brief. Applicants note that it is claim 4 that has been canceled, not claim 6.

Applicants submit herewith the sections identified as defective by the Examiner. A new **VI. Grounds of Rejection** section which does not refer to canceled claim 4 is presented on page 3 hereof, and a **Related Proceedings Appendix** is presented on page 4 hereof. These new sections are believed to comply with the requirements of 37 C.F.R. 41.37.

No fee is believed due herewith, but should a fee be due it may be charged to
Deposit Acct. No. 01-1425.

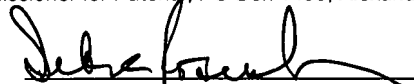
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CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EM007051832US addressed to the Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

November 6, 2007
Date


Debra Rosenbaum

VI. Grounds of Rejection

A. Claims 1-3 and 5-7 have been rejected under 35 U.S.C. 102(b) as being anticipated by Gil et al. U.S. Pat. No. 5,066,500. The Examiner has stated in the Office Action dated May 18, 2007 finally rejecting the claims, that Gil et al. teaches:

the limitations of claims 1-3 by teaching an infant formula containing nucleotides (paragraph bridging pages 2-3 of the Action);
the limitations of claims 5-6 by teaching a diet formulation containing 0.2-60 mg/dl nucleotides (middle paragraph of page 2); and,
the limitations of claim 7 by teaching infant formulas and nutrition products enriched with nucleosides, nucleotides and mixtures thereof to be fed to low birth weight newborns or term healthy infants (paragraph bridging pages 3-4).

B. Claims 1 and 5-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhlman et al., U.S. Pat. No. 6,913,778. The Examiner has stated in the Office Action dated May 18, 2007 finally rejecting the claims, that Kuhlman et al. teaches:

the limitations of claim 1 by teaching an infant formula containing nucleotides (paragraph bridging pages 5-6);
the limitations of claims 5-6 by teaching an infant formula having a total nucleotide concentration of 29.5 mg/L (page 6, first paragraph); and,
the limitations of claim 7 by teaching a certain method of feeding an infant (page 6, second paragraph).

Related Proceedings Appendix

None.